

FINAL RULE with Technical Amendments/September 20, 2006 (all new) AQ260ft

RULE

Department of Environmental Quality
Office of the Secretary
Legal Affairs Division

**Incorporation by Reference of the CAIR SO₂ Trading Program
(LAC 33:III.506) (AQ260ft)**

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has adopted the Air regulations, LAC 33:III.506 (Log #AQ260ft).

This rule is identical to federal regulations found in 40 CFR Part 96, Subparts AAA, BBB, CCC, FFF, GGG, and HHH (July 1, 2005), and 70 FR 25162-25405~~240~~ (May 12, 2005) and 71 FR 25328-25469 (April 28, 2006), which are applicable in Louisiana. For more information regarding the federal requirement, contact the Regulation Development Section at (225) 219-3550 or Box 4302, Baton Rouge, LA 70821-4302. No fiscal or economic impact will result from the rule; therefore, the rule will be promulgated in accordance with R.S. 49:953(F)(3) and (4).

This rule incorporates by reference the federal regulations concerning the Clean Air Interstate Rule (CAIR) SO₂ Trading Program. This action is necessary in order for Louisiana to adopt the general and specific provisions for the CAIR SO₂ Trading Program, under Section 110 of the Clean Air Act, as a means of mitigating interstate transport of fine particulate and sulfur dioxide. By adopting 40 CFR Part 96, Subparts AAA-HHH, the state is authorizing EPA to assist the state in implementing the CAIR SO₂ Trading Program.

On March 10, 2005, EPA announced the Clean Air Interstate Rule (CAIR), a rule that will achieve reduction in air pollution by regulating sulfur dioxide (SO₂) and nitrogen oxides (NO_x) emissions from 23 states and the District of Columbia. These pollutants contribute to levels of fine particles (PM_{2.5}) in areas above the air quality standard in downwind states. In addition, NO_x emissions in 25 eastern states and the District of Columbia contribute to levels of ozone in areas above the air quality standard for 8-hour ozone in other downwind states. In developing the CAIR SO₂ regulations and the cap-and-trade program, the Environmental Protection Agency relied on the successful Acid Rain Program/cap-and-trade program. The resulting CAIR SO₂ cap-and-trade program ~~was merged with~~ and the Acid Rain Program use a common SO₂ allowance system cap-and-trade program when CAIR defined CAIR SO₂ allocations as those allocations made under the Acid Rain Program. EPA has promulgated changes to the Acid Rain Program that provide for this common structure ~~reflect the CAIR SO₂ requirements.~~ These revisions ~~actions~~ enable the CAIR SO₂ cap-and-trade program to accept Acid Rain SO₂ allocations for trading, selling, and/or determining compliance with the CAIR SO₂ program. The basis and rationale for this rule are to mirror the federal regulations.

This rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required. This rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

Herman Robinson, CPM
Executive Counsel

TITLE 33
ENVIRONMENTAL QUALITY
Part III. Air

Chapter 5. Permit Procedures

§506. Clean Air Interstate Rule Requirements

A. Reserved.

B. Reserved.

C. Annual Sulfur Dioxide. Except as specified in this Section, the Federal SO₂ Model Rule, published in the *Code of Federal Regulations* at 40 CFR Part 96, July 1, 2005, and as revised at 70 FR 25162-25405~~210~~, May 12, 2005, and 71 FR 25328-25469, April 28, 2006, is hereby incorporated by reference, except for Subpart III—CAIR SO₂ Opt-in Units and all references to opt-in units.

1. ~~Subpart AAA—CAIR SO₂ Trading Program General Provisions. The Federal SO₂ Model Rule regulations, published in the *Code of Federal Regulations* at 40 CFR 96.201-96.208, July 1, 2005, and as revised at 70 FR 25162-25210, May 12, 2005, and 71 FR 25328-25469, April 28, 2006, are hereby incorporated by reference, except for the references to opt-in units found in 40 CFR 96.201, and in the definitions of CAIR NO_x ozone season unit, CAIR NO_x unit, CAIR SO₂ unit, and commence commercial operations in 40 CFR 96.202.~~

2. ~~Subpart BBB—CAIR Designated Representative for CAIR SO₂ Sources. The Federal SO₂ Model Rule regulations, published in the *Code of Federal Regulations* at 40 CFR 96.210-96.214, July 1, 2005, and as revised at 70 FR 25162-25210, May 12, 2005, and 71 FR 25328-25469, April 28, 2006, are hereby incorporated by reference.~~

3. ~~Subpart CCC—Permits. The Federal SO₂ Model Rule regulations, published in the *Code of Federal Regulations* at 40 CFR 96.220-96.224, July 1, 2005, and as revised at 70 FR 25162-25210, May 12, 2005, and 71 FR 25328-25469, April 28, 2006, are hereby incorporated by reference.~~

4. ~~Subpart DDD—Reserved.~~

5. ~~Subpart EEE—Reserved.~~

6. ~~Subpart FFF—CAIR SO₂ Allowance Tracking System. The Federal SO₂ Model Rule regulations, published in the *Code of Federal Regulations* at 40 CFR 96.250-96.257, July 1, 2005, and as revised at 70 FR 25162-25210, May 12, 2005, and 71 FR 25328-25469, April 28, 2006, are hereby incorporated by reference.~~

~~7. Subpart GGG—CAIR SO₂ Allowance Transfers. The Federal SO₂ Model Rule regulations, published in the *Code of Federal Regulations* at 40 CFR 96.260–96.262, July 1, 2005, and as revised at 70 FR 25162–25210, May 12, 2005, and 71 FR 25328–25469, April 28, 2006, are hereby incorporated by reference.~~

~~8. Subpart HHH—Monitoring and Reporting. The Federal SO₂ Model Rule regulations, published in the *Code of Federal Regulations* at 40 CFR 96.270–96.276, July 1, 2005, and as revised at 70 FR 25162–25210, May 12, 2005, and 71 FR 25328–25469, April 28, 2006, are hereby incorporated by reference, except that Paragraphs (b)(4) and (b)(5) shall be deleted from 40 CFR 96.270; Paragraph (d)(3)(iv)(D) shall be deleted from 40 CFR 96.271; and Paragraph (b) shall be deleted from 40 CFR 96.272.~~

D. Copies of documents incorporated by reference in this Section may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20242 or their website, www.gpoaccess.gov/cfr/index.html; from the Department of Environmental Quality, Office of Environmental Services, Air Permits Division; or from a public library.

E. Modifications or Exceptions. ~~Whenever the referenced regulations (i.e., 40 CFR Part 96) provide authority to “the Administrator,” such authority, in accordance with these regulations, shall be exercised by the administrative authority or his designee, notwithstanding any authority exercised by the U.S. Environmental Protection Agency (EPA). A copy of each R~~reports, or notices, or ~~of any~~ other documentation required by the referenced regulations (i.e., 40 CFR Part 96) to be provided to “the Administrator” shall be provided to the Office of Environmental Services, Air Permits Division, by the person required to make the submission to “the Administrator.” ~~where the state is designated authority by EPA as “the Administrator,” or shall be provided to the Office of Environmental Services, Air Permits Division and EPA, where EPA retains authority as “the Administrator.”~~

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 32:**.